

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2005/050586

International filing date (day/month/year)
10.02.2005

Priority date (day/month/year)
11.02.2004

International Patent Classification (IPC) or both national classification and IPC
C07D403/04, C07D401/14, C07D401/04, A61P35/00, A61K31/4184, A61K31/4196

Applicant
BASILEA PHARMACEUTICA AG

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2005/050586

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
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International application No.
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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 13

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 13
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.
- ☐ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2005/050586

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1, 8, 12
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1, 8, 12
Industrial applicability (IA)	Yes: Claims	1, 8, 12
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item III.

Claim 13 relates to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of this claim (Article 34(4)(a)(i) PCT). See also the paragraph on : "Industrial applicability" in item V below.

Re Item V

Reference is made to the following documents:

D1: US-B-6 211 1771

D2: US-B-6 369 0921

- 1) The present subject matter overlaps with D1, of which it is considered a novel selection on account of substituent at position 2 of the present benzimidazole derivative of formula I.

The present subject matter differs from D2 on account of the substituent at position 2 of the present benzimidazole derivative of formula I.

The present subject matter appears therefore to fulfil the requirements of Article 33(2) PCT

- 2) The present subject matter is directed towards benzimidazoles substituted at position 2 by a pyrazolyl or triazolyl moiety for inducing apoptosis.

D1 is considered to be the closest prior art and discloses benzimidazoles substituted at position 2 by specific aryl or heteroaryl groups, including, inter alia, pyrazolyl. The present subject matter overlaps with D1 (cf definition of R1, R3 and R6).

It is also noted that with regard to present residue R, D2 discloses the equivalence of phenyl and few specific heteroaryl (e.g. pyridinyl).

The problem to be solved by the present application is therefore considered to be the provision of further benzimidazole derivatives which have unexpected properties when compared with the closest prior art compounds from D1, i.e. unexpectedly solve a problem not yet solved. It appears therefore that an inventive step for the present subject matter can be established only in a comparative manner, i.e. by providing data - e.g. comparative tests - showing that the present compounds have indeed unexpected properties when compared with the structurally closest compounds from D1.

As the present description does not appear to disclose such comparative data, an inventive step cannot be acknowledged for the present subject matter (Article 33(3) PCT)

- 3) For the assessment of the present claim 13 on the question whether it is industrially applicable, no unified criteria exist in the PCT Contracting States (Article 33(4) PCT). The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.